**Criminal Revision No.90 of 2003.**

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH**

**...**

**Criminal Revision No.90 of 2003.**

**Date of Decision: February 25, 2010.**

**Gulshan Kumar** **...** Petitioner

VERSUS

**State of Haryana** **...**Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

**HON'BLE MR. JUSTICE MOHINDER PAL.**

Present: Mr.Ram Chander, Advocate,
for the petitioner.

Ms. Sushma Chopra, Additional Advocate General,
Haryana.

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**MOHINDER PAL, J.**

Petitioner Gulshan Kumar faced trial under Sections 279, 337 and 304-A of the Indian Penal Code (hereinafter referred to

as `the Code') on the allegation that on 4.12.1998, he was driving Four-wheeler No. HR-05-5139, rashly and negligently, which resulted in its collision with Scooter bearing registration No.DEQ-9063 being driven by Rajesh Kumar and Lomesh Giri on its pillion seat. As a result of the accident, both Rajesh Kumar and Lomesh Giri fell down from the scooter. The four-wheeler being driven by the accused-petitioner thrashed the scooter for some distance and then stopped. Rajesh Kumar and Lomesh Giri received multiple injuries in the accident. Rajesh Kumar succumbed to the injuries. The petitioner was convicted by the trial Court under Sections 279, 337 and 304-A of the Code and sentenced to undergo maximum rigorous imprisonment for one year besides fine of Rs.2000/- for the aforesaid offences as the substantive sentences were ordered to run concurrently. His appeal was dismissed by the lower appellate Court. Hence this revision petition.

I have heard Mr.Ram Chander, Advocate, appearing for the petitioner and Ms. Sushma Chopra, Additional Advocate General, Haryana, appearing for the State and have gone through the records of the case.

The instant case was registered on the statement of Jiwan Kumar (P.W.6). He was running the shop of photography at the Hospital Road, Karnal. The accident had taken place in front of his shop. At the time of accident, son of Jiwan Kumar, namely, Tarun Kumar (P.W.7) was also present at the shop. Both of them

have fully supported the prosecution case. There is nothing on record to show that they had any reason to falsely implicate the accused. No doubt, the deceased was a kith and kin of these witnesses, being the son of complainant Jiwan Kumar and brother of Tarun Kumar, but it cannot be said that they had falsely implicated the accused. In fact, they being father and brother respectively of the deceased must have been anxious to bring to book the real culprit. They testified that the accident occurred due to rash and negligent driving of the petitioner. They had no axe to grind against the petitioner.

Learned counsel for the petitioner pointed out that the Investigating Officer was not examined in this case and it makes the case of the prosecution doubtful. However, after giving a careful thought to this argument of the learned counsel for the petitioner, I do not find any merit in the same. In this case, Jagdish Lal (P.W.5), Motor Mechanic, who had mechanically examined both the vehicles, proved his reports Exhibits P.5 and P.6. Anil Kumar (P.W.5), who had taken photographs of the place of accident, proved the photographs Exhibits P.W.5/A to P.W.5/E and their negatives Exhibits P.W.5/F to P.W.5/J. Furthermore, the accused-petitioner did not dispute the place of accident and the defence taken by him was that the offending vehicle was not being driven by him but it was the owner of the said vehicle who was driving it. As such, the non-examination of the Investigating Officer will not affect the merits of the prosecution case nor it will cause any

prejudice to the petitioner as there is other evidence connecting the accused with the offence.

The medical evidence furnished by Dr.V.K. Aggarwal (P.W.1) and Dr.(Mrs.) Sushila Ajmani (P.W.3) lends further corroboration to the prosecution version. Dr. V.K. Aggarwal, who had medico-legally examined Rajesh Kumar, proved his report Exhibit P.2. He also proved ruqa (Exhibit P.3) sent to the police regarding arrival of the patient in the hospital and further proved ruqa (Exhibit P.4) informing the police regarding the death of Rajesh Kumar (injured). Dr. (Mrs.) Sushila Ajmani had conducted post mortem examination on the dead body of Rajesh Kumar and she proved the post mortem report (Exhibit P.W.4/A).

The facts and circumstances of the case, discussed above, do not warrant interference by this Court in exercise of its revisional jurisdiction under Section 401 of the Code of Criminal Procedure. Accordingly, this revision petition is hereby dismissed being without any merit.

February 25, 2010. **( MOHINDER PAL )**
ak **JUDGE**